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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ISRAEL H. CARRENO,

Defendant and Appellant.

B208122

(Los Angeles County
Super. Ct. No. PA050430)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Ronald S. Coen, Judge. Affirmed.

Dennis L. Cava, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Pamela C. Hamanaka, Assistant
Attorney General, James William Bilderback II and Taylor Nguyen, Deputy Attorneys
General, for Plaintiff and Respondent.

Israel H. Carreno (appellant) appeals from the trial court's ruling denying him reinstatement of probation for the offense of perjury in application for an identification card (Pen. Code, § 118, subd. (a)), to which he pleaded nolo contendere on April 21, 2005. The trial court revoked probation and imposed the midterm sentence of three years for the offense.

Appellant appeals on the ground that he should be afforded a new sentencing hearing, since the trial court failed to truly exercise its discretion and consider all the material facts, which violated appellant's federal constitutional rights to due process.

FACTS

On April 21, 2005, appellant pleaded no contest to one count of perjury in application for an identification card (Pen. Code, § 118, subd. (a)). He was placed on formal probation for a period of three years under terms and conditions that included the term requiring him to obey all laws. Approximately five months after appellant's plea, his probation officer reported that appellant had been arrested on August 19, 2005.¹ A hearing was scheduled in September 2005, and appellant failed to appear. On November 4, 2005, appellant's probation was revoked and a bench warrant was issued.

When appellant was arrested on April 14, 2008, for driving under the influence of alcohol, the warrant was discovered. A formal probation violation hearing was held on May 19, 2008. Deputy Probation Officer John Matson testified that appellant was given a referral for Caltrans service and for a parenting program as part of his conditions of probation. There was no record of appellant having reported for his Caltrans service. Appellant attended counseling sessions at a center for the prevention of family violence for two months and then stopped reporting. He was therefore terminated from the program. Appellant had paid only \$100 of his financial obligation, leaving a balance of \$3,109. Appellant last reported to his probation officer, Ms. Hernandez, on August 17, 2005. She informed the court of appellant's failure to report, and the matter was placed on calendar, but appellant failed to appear.

¹ Some of the facts have been gleaned from the probation officer's reports.

Appellant testified that he was unable to complete his Caltrans service and parenting classes because he was laid off from his job, and he did not have the money for the classes or to pay Caltrans. He could not get another job. He told his probation officer about this problem, but “she would keep pushing [him].” Appellant said he did make an effort.

The trial court found appellant in violation of probation based on failure to report to the probation officer and revoked probation. The court stated that, assuming appellant’s statements were true, his situation did not excuse the failure to report to the probation officer. The court found appellant not suitable for reinstatement of probation and imposed the midterm sentence of three years.

DISCUSSION

I. Appellant’s Argument

Appellant contends it is evident that the trial court did not exercise its discretion and abused its discretion because it did not consider all of the material facts in deciding whether to reinstate probation. Appellant’s “sporadic and less-than-extensive criminal record” were justifiable reasons for reinstatement, and the midterm was too harsh for a failure to report. Appellant argues the matter should be remanded for the trial court to consider the material facts.

II. Relevant Authority

“Pursuant to Penal Code section 1203.2, subdivision (a) . . . a court is authorized to revoke probation ‘if the interests of justice so require and the court, in its judgment, has reason to believe . . . that the person has violated any of the conditions of his or her probation. . . .’” (*People v. Rodriguez* (1990) 51 Cal.3d 437, 440, fn. omitted; see also Cal. Rules of Court, rule 4.435(a).) Section 1203.2 does not expressly state that a defendant may be reinstated on probation, but numerous cases have recognized that the court’s authority to modify probation necessarily includes the power to reinstate it. (See, e.g., *People v. Medina* (2001) 89 Cal.App.4th 318, 323.) A trial court has three options when it has found an individual in violation of probation. It can reinstate probation on

the same terms, reinstate probation on modified terms, or terminate probation and commit the probationer to prison. (*People v. Harris* (1990) 226 Cal.App.3d 141, 147; see also *People v. Medina, supra*, at pp. 322–323.)

A defendant’s previous failure to comply with the terms of probation is a sufficient reason for refusing to place him on probation again. (See *People v. Jones* (1990) 224 Cal.App.3d 1309, 1316.) Probation is not a matter of right but an act of clemency, the granting and revocation of which are entirely within the sound discretion of the trial court. (*People v. Howard* (1997) 16 Cal.4th 1081, 1092.)

III. Trial Court’s Ruling Proper

On the facts before this court, absent a showing to the contrary, we presume the trial court was aware of and followed applicable law, and that the court was aware of the discretion it held. (*People v. Mosley* (1997) 53 Cal.App.4th 489, 496.) Discretion is abused when “the court exceeds the bounds of reason, all of the circumstances before it being considered. The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power.” (*People v. Thompson* (1994) 24 Cal.App.4th 299, 308.)

At the outset, defense counsel asked the trial court to reinstate appellant on probation, which negates appellant’s claim that the trial court was not aware of that option. We believe the trial court did not abuse its discretion in declining this request. The trial court heard evidence that appellant had not reported to his probation officer for approximately two years eight months, and the only reason he was caught was due to an arrest for driving under the influence. The trial court stated, “Assuming the defendant’s statements were true, that does not excuse the failure to report to probation officer, which is the basis of this violation, not the commission of the Caltrans. Defendant was on probation at the time of the commission of the offense, albeit for a misdemeanor, and in this case defendant is not suitable for reinstitution of probation. This case is actually

worth more than the midterm, but I will impose the midterm, if for nothing else based on defendant's record at the time."

Clearly the trial court took into consideration appellant's "less-than-extensive" criminal record at the time the perjury offense was committed, but believed his conduct since that time had shown appellant's inability to abide by terms and conditions of probation and the law in general. In addition, the probation report recommended that probation remain revoked and that sentence be pronounced and imposed. The probation officer believed appellant had been given more than enough opportunities to comply with court orders. The officer found that the prognosis for appellant's compliance with his conditions of probation was extremely poor.

We will not interfere with the trial court's exercise of discretion when it has considered all facts bearing on the offense and decided to sentence the defendant rather than reinstate probation, as it did in this case. (*People v. Downey* (2000) 82 Cal.App.4th 899, 909–910.) Moreover, because the trial court was clearly aware of the full scope of its discretion, we see no violation of appellant's right to due process.

DISPOSITION

The judgment is affirmed.

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_____, P. J.

BOREN

We concur:

_____, J.

DOI TODD

_____, J.

CHAVEZ